



9110-04-P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 165

[Docket Number USCG-2011-0906]

RIN 1625-AA87

Security Zone; Cruise Ships, Santa Barbara Harbor, Santa Barbara,
California

AGENCY: Coast Guard, DHS.

ACTION: Final rule.

SUMMARY: The Coast Guard has established fixed security zones around and under any cruise ships visiting Santa Barbara Harbor, Santa Barbara, California. This regulation was created for national security reasons to protect cruise ships, vessels, users of the waterway and the port from potential terrorist acts. These security zones encompass all navigable waters from the surface to the sea floor within a 100-yard radius of any cruise ship located within 3 nautical miles of the Santa Barbara Harbor Breakwater Light (Light List Number 3750). Mariners can determine the exact time and date of these zones via Broadcast Notice to Mariners, or via visual verification of the cruise ships on AIS. Entries into these zones are prohibited unless specifically authorized by the Captain of the Port (COTP) Los Angeles - Long Beach (LA-LB), or his designated representative.

DATES: This rule is effective [INSERT DATE 30 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER].

ADDRESSES: Documents mentioned in this preamble are part of docket [USCG-2011-0906]. To view documents mentioned in this preamble as being available in the docket, go to <http://www.regulations.gov>, type the docket number in the "SEARCH" box and click "SEARCH." Click on Open Docket Folder on the line associated with this rulemaking. You may also visit the Docket Management Facility in Room W12-140 on the ground floor of the Department of Transportation West Building, 1200 New Jersey Avenue SE, Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: If you have questions on this rule, call or e-mail LTJG Brett DiManno, USCG, Waterways Management, U.S. Coast Guard Sector Los Angeles - Long Beach at (310) 521-3860, or Brett.M.DiManno@uscg.mil. If you have questions on viewing or submitting material to the docket, call Renee V. Wright, Program Manager, Docket Operations, telephone (202) 366-9826.

SUPPLEMENTARY INFORMATION:

Table of Acronyms

DHS	Department of Homeland Security
FR	Federal Register
NPRM	Notice of Proposed Rulemaking

A. Regulatory History and Information

This rule was proposed and published in the Federal Register on June 20, 2012 (77 FR 36955). Previously, temporary security zones had been established for cruise ships operating in Santa Barbara.

B. Basis and Purpose

In its effort to thwart terrorist activity, the Coast Guard has increased safety and security measures on U.S. ports and waterways. As part of the Diplomatic Security and Antiterrorism Act of 1986 (Pub. L. 99-399), Congress added section 7 of the Ports and Waterways Safety Act (PWSA), 33 U.S.C. 1226, to allow the Coast Guard to take actions, including the establishment of security and safety zones, to prevent or respond to acts of terrorism against individuals, vessels, or public or commercial structures. The Coast Guard also has authority to establish security zones pursuant to the Magnuson Act (50 U.S.C. 191 *et seq.*) and implementing regulations promulgated by the President in subparts 6.01 and 6.04 of part 6 of title 33 of the Code of Federal Regulations.

In order to address the aforementioned security concerns, and to take steps to prevent the catastrophic impact that a terrorist attack against a cruise ship would have on the public interest, the Coast Guard has established security zones around and under cruise ships visiting Santa Barbara Harbor, Santa

Barbara, California. This security zone helps the Coast Guard to prevent vessels or persons from engaging in terrorist actions against cruise ships. The Coast Guard has determined the establishment of security zones is prudent for cruise ships because they carry a multitude of passengers.

Based on experience with security zone enforcement operations, the Captain of the Port (COTP) Los Angeles - Long Beach has concluded that these security zones will encompass all navigable waters from the surface to the sea floor within a 100-yard radius of any cruise ship which is located within 3 nautical miles of the Santa Barbara Harbor Breakwater Light (Light List Number 3750; 34-24-17.364 N, 119-41-16.260W). These security zones are necessary to provide for the safety of the cruise ship, vessels, and users of the waterway.

C. Discussion of Comments, Changes and the Final Rule

The Coast Guard received one comment to the proposed rule. The comment suggested that Automatic Identification System (AIS) be used to advertise the location of the security zone. The Coast Guard agrees in principle with the comment; however, we made no regulatory changes. While mariners with AIS may be able to locate cruise ships in the Santa Barbara area, the majority of boaters will be able to locate the cruise ships visually, due to the small geographic size and depth restrictions of the harbor. In an effort to keep mariners informed, the Coast Guard will

continue to advertise active security zones via broadcast notice to mariner.

D. Regulatory Analyses

We developed this rule after considering numerous statutes and executive orders related to rulemaking. Below we summarize our analyses based on 13 of these statutes or executive orders.

1. Regulatory Planning and Review

This rule is not a significant regulatory action under section 3(f) of Executive Order 12866, Regulatory Planning and Review, and does not require an assessment of potential costs and benefits under section 6(a)(3) of that Order. The Office of Management and Budget has not reviewed it under that Order. We expect the economic impact of this rule to be so minimal that a full Regulatory Evaluation is unnecessary. Although this regulation restricts access to a portion of navigable waters, the effect of this regulation is not significant because:

- (i) The zones only encompass a small portion of the waterway;
- (ii) vessels are able to pass safely around the zones; and
- (iii) vessels may be allowed to enter these zones on a case-by-case basis with permission of the Captain of the Port (COTP) Los Angeles - Long Beach, or his designated representative.

The size of the zone is the minimum necessary to provide adequate protection for all cruise ships and other vessels operating in the vicinity of these vessels, adjoining areas, and the public. The entities most likely to be affected are fishing vessels and pleasure craft engaged in recreational activities and sightseeing.

2. Impact on Small Entities

The Regulatory Flexibility Act of 1980 (RFA), 5 U.S.C. 601-612, as amended, requires federal agencies to consider the potential impact of regulations on small entities during rulemaking. The term "small entities" comprises small businesses, not-for-profit organizations that are independently owned and operated and are not dominant in their fields, and governmental jurisdictions with populations of less than 50,000. The Coast Guard received 0 comments from the Small Business administration on this rule. The Coast Guard certifies under 5 U.S.C. 605(b) that this rule will not have a significant economic impact on a substantial number of small entities. This rule will affect the following entities, some of which may be small entities: the owners or operators of vessels intending to transit or anchor in Santa Barbara Harbor within a 100-yard radius of cruise ships covered by this rule.

This security zone regulation will not have a significant economic impact on a substantial number of small entities because vessel traffic can pass safely around the zones.

If you think that your business, organization, or governmental jurisdiction qualifies as a small entity and that this rule would have a significant economic impact on it, please submit a comment (see ADDRESSES) explaining why you think it qualifies and how and to what degree this rule would economically affect it.

3. Assistance for Small Entities

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Public Law 104-121), we want to assist small entities in understanding this rule. If the rule affects your small business, organization, or governmental jurisdiction and you have questions concerning its provisions or options for compliance, please contact the person listed in the FOR FURTHER INFORMATION CONTACT, above.

Small businesses may send comments on the actions of Federal employees who enforce, or otherwise determine compliance with, Federal regulations to the Small Business and Agriculture Regulatory Enforcement Ombudsman and the Regional Small Business Regulatory Fairness Boards. The Ombudsman evaluates these actions annually and rates each agency's responsiveness to small business. If you wish to comment on actions by employees of the Coast Guard, call 1-888-REG-FAIR (1-888-734-3247). The Coast Guard will not retaliate against small entities that question or complain about this rule or any policy or action of the Coast Guard.

4. Collection of Information

This rule will not call for a new collection of information under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501-3520).

5. Federalism

A rule has implications for federalism under Executive Order 13132, Federalism, if it has a substantial direct effect on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. We have analyzed this rule under that Order and determined that this rule does not have implications for federalism.

6. Protest Activities

The Coast Guard respects the First Amendment rights of protesters. Protesters are asked to contact the person listed in the "FOR FURTHER INFORMATION CONTACT" section to coordinate protest activities so that your message can be received without jeopardizing the safety or security of people, places or vessels.

7. Unfunded Mandates Reform Act

The Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531-1538) requires Federal agencies to assess the effects of their discretionary regulatory actions. In particular, the Act addresses actions that may result in the expenditure by a State, local, or tribal government, in the aggregate, or by the private sector of \$100,000,000 (adjusted for inflation) or more in any one year. Though this rule does not result in such an

expenditure, we do discuss the effects of this rule elsewhere in this preamble.

8. Taking of Private Property

This rule does cause a taking of private property or otherwise have taking implications under Executive Order 12630, Governmental Actions and Interference with Constitutionally Protected Property Rights.

9. Civil Justice Reform

This rule meets applicable standards in sections 3(a) and 3(b)(2) of Executive Order 12988, Civil Justice Reform, to minimize litigation, eliminate ambiguity, and reduce burden.

10. Protection of Children

We have analyzed this rule under Executive Order 13045, Protection of Children from Environmental Health Risks and Safety Risks. This rule is not an economically significant rule and does not create an environmental risk to health or risk to safety that may disproportionately affect children.

11. Indian Tribal Governments

This rule does not have tribal implications under Executive Order 13175, Consultation and Coordination with Indian Tribal Governments, because it does not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes.

12. Energy Effects

This action is not a "significant energy action" under Executive Order 13211, Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use.

13. Technical Standards

This rule does not use technical standards. Therefore, we did not consider the use of voluntary consensus standards.

14. Environment

We have analyzed this rule under Department of Homeland Security Management Directive 023-01 and Commandant Instruction M16475.1D, which guide the Coast Guard in complying with the National Environmental Policy Act of 1969 (NEPA) (42 U.S.C. 4321-4370f), and have determined that this action is one of a category of actions that do not individually or cumulatively have a significant effect on the human environment. This rule involves the establishment of security zones.

List of Subjects in 33 CFR Part 165

Harbors, Marine safety, Navigation (water), Reporting and recordkeeping requirements, Security measures, Waterways.

For the reasons discussed in the preamble, the Coast Guard amends 33 CFR part 165 as follows:

PART 165--REGULATED NAVIGATION AREAS AND LIMITED ACCESS AREAS

1. The authority citation for part 165 continues to read as follows:

Authority: 33 U.S.C. 1231; 46 U.S.C. Chapter 701, 3306, 3703; 50 U.S.C. 191, 195; 33 CFR 1.05-1(g), 6.04-1, 6.04-6, and 160.5; Pub. L. 107-295, 116 Stat. 2064; Department of Homeland Security Delegation No. 0170.1.

2. Add § 165.1157 to read as follows:

§ 165.1157 Security Zone; Cruise Ships, Santa Barbara, California.

(a) Location. The following areas are security zones: All navigable waters, from the surface to the sea floor within a 100-yard radius of any cruise ship located within 3 nautical miles of the Santa Barbara Harbor Breakwater Light (Light List Number 3750; 34-24-17.364 N, 119-41-16.260W).

(b) Definition. "Cruise ship" as used in this section means any vessel, except for a ferry, over 100 feet in length, authorized to carry more than 12 passengers for hire; making voyages lasting more than 24 hours, any part of which is on the high seas; and for which passengers are embarked or disembarked in the U.S. or its territories.

(c) Regulations. (1) Under general security zone regulations in subpart D, entry into or remaining in the zones described in paragraph (a) of this section is prohibited unless authorized by the Coast Guard Captain of the Port (COTP) Los Angeles - Long Beach (LA-LB), or a designated representative of COTP LA-LB.

(2) Persons desiring to transit the area of the security zone may contact the COTP LA-LB at telephone number 1-310-521-3801 or on VHF-FM channel 16 (156.800 MHz) to seek permission to transit the area. If permission is granted, all persons and vessels must comply with the instructions of the Captain of the Port, or his designated representative.

Dated: October 1, 2012

J. D. Jenkins

Captain, U.S. Coast Guard

Captain of the Port Los Angeles - Long Beach

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